



POLICE DEPARTMENT

The  
City  
of  
New York

November 24, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Angel Irizarry  
Tax Registry No. 932104  
Police Service Area 7  
Disciplinary Case No. 2012-7874

The above-named member of the Department appeared before me on September 26, 2013, October 9, 2013 and April 21, 2014, charged with the following:

1. Said Police Officer<sup>1</sup> Angel Irizarry, assigned to PSA #7, on or about and between October 4, 2011 and October 8, 2011, at a location known to this Department, in Bronx County, did wrongfully and without just cause prevent or interfere with an official Department investigation, to wit: said [Police Officer] made misleading statements during an interview conducted by prosecutors at the Bronx County District Attorney's Office wherein said Police Officer denied making prior positive identification of perpetrators involved in a shooting in the confines of the 44th Precinct. *(As amended)*

P.G. 203-10, Page 1, Paragraph 2(d) – PUBLIC CONTACT PROHIBITED CONDUCT

2. Said Police Officer Angel Irizarry, assigned as indicated in Specification #1, on or about and between October 4, 2011 and October 8, 2011, at a location known to this Department, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said officer made inconsistent statements to Members of the New York City Police Department and prosecutors at the Bronx County District Attorney's Office regarding a shooting in the confines of the 44th Precinct. *(As amended)*

P.G. 203 10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT

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<sup>1</sup> At the time of the incident, Respondent held the rank of Detective-Specialist.

The Department was represented by Beth Douglas and Joshua Kleiman, Esqs., Department Advocate's Office, and Respondent was represented by Eric Sanders, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is undisputed that on the night of October 4, 2011, Respondent while off duty called 911 about a shooting c [REDACTED] in the Bronx. He stated to the 911 operator that his call was not an emergency but that he wanted to report "an addition to the shots fired." He proceeded to give descriptions of Hispanic male suspects, one of whom was wearing a red shirt or red sweater and all the others were wearing dark clothing. He described one male in a black leather jacket appearing to have a gun in his waistband. He saw the men fleeing in a black minivan, a Caravan or an Astro, with light blue high definition lights. [Department's Exhibits (DX) 5 and 5A are the audio recording and transcript of Respondent's 911 call and radio transmissions for the job.]

It is also not in dispute that Respondent is asked to canvass to see if he can locate the van and/or suspects. Respondent introduced himself to on-duty responding officers and went on a canvass of the area with Police Officer Patrick Callahan and his partner, Officer Colvin. The officers brought Respondent to multiple locations where suspects

had been stopped and he failed to make a positive identification. At the scene of a car stop, Respondent positively identified the minivan. This stop resulted in three suspects being arrested. The District Attorney's (DA's) Office ended up declining prosecution. It is also not in dispute that not one member of the service on duty at the time of this incident who was involved in the investigation of this shooting made any relevant Activity Log entries pertaining to this matter. In dispute is whether Respondent gave misleading statements during an interview conducted by prosecutors at the Bronx DA's Office wherein Respondent denied making a prior positive identification of perpetrators involved in a shooting in the confines of the 44 Precinct. In also in dispute is whether Respondent made inconsistent statements to members of the Department and prosecutors at the DA's Office regarding a shooting in the confines of the 44 Precinct.

The Department's Case

The Department called Sergeant Kevin Grayson, Police Officer Sean Quealy, Lieutenant Alexander Rojas, Police Officer Patrick Callahan, Todd Drantch and Lieutenant Joseph Shirvis as witnesses.

Sergeant Kevin Grayson

Grayson, a 15-year member of the Department, is currently assigned to housing conditions at the 44 Precinct. On the block of the shooting, he stopped two or three individuals on foot that fit the description of the suspects. He radioed to Callahan to bring Respondent to the location. Upon his arrival, Respondent informed the officers that the stopped individuals were not involved in the incident. The individuals were released.

Grayson subsequently conducted the felony stop of a minivan. He testified that guns were drawn as the male Hispanics were removed from the vehicle and placed in handcuffs on the ground. The van was searched and no firearms were recovered. Grayson again had Callahan bring Respondent to the location. Grayson said Callahan arrived with the witness, a police officer he believed (Respondent). Respondent identified the two people as being part of the shooting and Grayson left Callahan with whoever was the supervisor and the suspects, and he resumed patrol. Grayson could not say who the supervisor was. He never spoke to Respondent and he never heard Respondent say anything about a muzzle flash. Grayson resumed patrol, leaving the three individuals with Callahan and a supervisor.

Grayson testified that he could not recall making any observations regarding the headlights on the vehicle. Upon his return to the station house, Grayson did not have any interaction with the apprehended individuals, Respondent, Callahan, or Officer Sean Quealy. He did not know if he noted Respondent's positive identification in his Activity Log, though that was something that should have been recorded.

Police Officer Sean Quealy

Quealy, a six-year member of the Department, is currently assigned to the Queens Gang Squad. While a member of the 44 Precinct's conditions team, he was assigned the arrest of the three individuals removed from the minivan. Lieutenant Alexander Rojas, who assigned the arrest to him, told him that the defendants had been identified by a member of the service at the location. Quealy himself was not present at the scene of

arrest. In assigned arrest situations, the assigned officer usually gets information from the officer who effected the arrest.

According to Quealy, while the three defendants' pedigrees were being taken at the precinct, Quealy was approached by Respondent who told him what happened. Respondent told him during a three to five minute conversation that "as he was walking home, he observed a group of four males on the corner. One of them wearing a red hoodie pulled out a firearm and shot seven rounds into another group on another corner." The male wearing the red hoodie then handed the firearm to a male in a red vest, who then put the firearm in his waistband. The shooter who initially had the firearm fled in an unknown direction, and the other three fled in a blue or purple van. The shooter was not apprehended. When Quealy was trying to figure out which defendants in the cells were his, he noticed one of the males was wearing a red jacket and wanted to make sure that was either the shooter or person who received the firearm. Quealy testified that Respondent pointed to the man and identified him as the one who received the firearm.

The online booking sheets that Quealy prepared for the arrests contained a narrative of what had happened. The narrative Quealy wrote was based solely on what Respondent told him. [Department's Exhibits (DX) 1 through 3 are the online booking sheets for this case. The narrative section reads: "At T/P/O witness states that defts#1-4 did fire 7 rounds into a group of people, then fled the location in a vehicle. Deft#4 unapprehended fled location on foot."]

Before Respondent left, Quealy took his name, shield number, and phone number. Quealy made a few entries in his Activity Log with respect to the case; however, he did

not think he recorded in his Activity Log his conversation with Respondent. Quealy was unaware that Respondent made a 911 call and never listened to it.

After confirming with Rojas what the arrest charges should be, Quealy went back into his office and started his arrest paperwork. He faxed the completed paperwork to the DA's Office. The next day, he met with Assistant District Attorney (ADA) Winik. Winik called Respondent while Quealy was at the DA's office, but Quealy was not present in the room during their conversation.

During cross-examination, Quealy denied receiving any Stop, Question and Frisk Reports (UF 250s) from Grayson who stopped the individuals who were later arrested. He denied receiving any written statements from Grayson or Rojas. Initially, Quealy denied being aware of any ammunition being recovered at the scene, yet he stated that Police Officer Anabel Mercado vouchered the bullets and the fired rounds. He denied having a conversation with Mercado and said that he learned of the ballistics from the ADA.

Lieutenant Alexander Rojas

Rojas, currently assigned as operations coordinator of the 44 Precinct, has been a member of the Department for over eighteen years. He stopped a vehicle in the vicinity of the shooting, but Respondent gave a negative identification when he arrived at the location. Rojas subsequently responded to the scene of Grayson's car stop, where the three suspects were already handcuffed. Callahan, Grayson, who was the housing conditions supervisor, and a couple of other units were all there. When Rojas asked what was going on, he was informed that the "off-duty detective . . . positively identified those

three individuals standing outside the van as the ones that were involved in the incident—the shooting incident.” Rojas described the vehicle as a blue minivan, but did not recall what type of headlights were on the vehicle. Rojas approached Respondent and asked, ““Are you sure these are the guys?” He said, ‘Yes.’ I said, ‘Are you sure that’s the vehicle?’ He said, ‘Yes.’” Though Rojas had already been informed there was a positive ID, he had this conversation with Respondent “for [his] own knowledge, [his] own confirmation.” Rojas did not learn from Respondent what roles each of the three individuals played in the shooting. Rojas told Grayson to assign the arrests to Quealy, and he resumed patrol.

When Rojas returned to the station house, he briefly spoke with Quealy and asked him how everything was going. Quealy told Rojas that everything was fine. Rojas confirmed that as per the Patrol Guide, when there is a turnover arrest, the supervisor at the scene is supposed to document it in his Activity Log. Rojas did not write anything in his Activity Log because it was Grayson who was the first supervisor at the scene and verified the arrest. Rojas did not ensure that Grayson followed proper turnover arrest procedure. Rojas never spoke to Respondent at the station house.

Police Officer Patrick Callahan

Callahan, a 26-year member of the Department, is currently on terminal leave. While canvassing the area with Colvin, Respondent approached, identified himself as an off-duty member of the service, and said that he heard shots fired and observed a male with a gun flee in a minivan. Respondent provided further details, including something about a red jacket and a black jacket. Callahan transmitted the description over the radio.

Callahan brought Respondent to two stops, where he made negative identifications, before going to the scene of Grayson's car stop, where three men were lying on the ground. One was wearing a red jacket and another was wearing a black jacket. Respondent got out of the sector car and said, "That's definitely the van and that's definitely the guys." Respondent did not, however, specifically state which of the men was carrying the gun. Callahan took Respondent to the station house.

Either Callahan or Colvin would have been the arresting officer before the arrests were assigned to Quealy. Callahan never placed handcuffs on the individuals, and he did not know what the turnover arrest procedure was. Callahan told Quealy exactly what happened from his point of view. Callahan introduced Respondent to Quealy, and he explicitly told Quealy to interview Respondent in order to get the story firsthand. He told Quealy this because the DA's Office wanted assigned officers in "informed by cases" to get information firsthand instead of "being informed by two or three people down the road." Callahan resumed patrol, but he assumed Quealy spoke with Respondent.

Callahan did not document any of the events regarding the incident in his Activity Log. He explained that he did not make entries because he was the operator that day, and he had Colvin, his partner, if he "needed anything for that."

Todd Drantch

Drantch has worked as an ADA in the Bronx for over five years. On October 6, 2011, Drantch was working in the Intake Bureau, the Grand Jury Bureau, when he was assigned the case of Defendant [REDACTED]. The next day, Drantch met with Quealy to inquire as to what happened in the case. Quealy told Drantch that his knowledge of the incident

was based on information he obtained from Respondent and Rojas. Drantch testified that Quealy gave the following account:

There was a shooting or shots that had been discharged on a on a street in the Bronx. There was an off-duty officer [Respondent] who had observed the shots, specifically muzzle flashes that were that had – he had observed muzzle flashes specifically from the shooter. After . . . the shooter got into a van which drove away. Later [Respondent] was taken to the site of where that van had been stopped; he had identified the driver as the person who had a gun there was some kind of an exchange, I believe, with the gun but [Respondent] had identified the driver and several other passengers who were inside the vehicle.

Drantch met with Respondent on October 8, 2011, and Respondent's account of the incident was "drastically different" from Quealy's:

Officer Irizarry told me that he was not on the street at the time that the shots rang out, that he was in his apartment. He told me that he did not see the shooter actually fire. He told me that he had only heard shots that had come from either up the block or around the corner I believe is what he told me. After he heard the shots, he looked out the window, he saw a group of individuals who got into a van. The van then drove away. Later that minivan returned to the scene. When the van came back, two individuals got out of the van and exchanged what he thought looked like a firearm. One of the individuals walked away, the other individual got into the back the person who received the gun got into the back of the van, not into the driver's seat, and then the van drove away. I remember him telling me that he couldn't identify any he didn't see any faces because he was looking from his bedroom window – he was looking from his window. I don't remember if it was his bedroom or living room, but he didn't see any faces and that he later he was brought to the van which was stopped and at that time he said that he couldn't he couldn't identify any of the individuals because he was at his he was – again, he didn't see any faces, he was looking from his window. But he identified the van as the same van he had seen drive away, come back, and then drive away again.

Drantch was "troubled to say the least" because Quealy's account of what happened was "mutually exclusive" from Respondent's. He explained, "It didn't seem to be the type of thing where different witnesses would have observed something different from points of view, it seemed to be mutually exclusive." Drantch re-conferenced the

case with his supervisors. In light of “these divergent stories,” it was decided that the case was not going to be presented to the Grand Jury, but instead referred to the Rackets Bureau to investigate. Drantch did not have any further involvement with the case.

Drantch was not present to observe any conversation that Respondent and Quealy had on the night of the arrests. Drantch did not recall speaking with Rojas. He could not recall if he ever reviewed the SPRINT Report or Respondent’s 911 call.

Lieutenant Joseph Shirvis

Shirvis, a 15-year member of the Department, is currently assigned to the 44 Precinct. While assigned as a sergeant in the Internal Affairs Bureau (IAB), he conducted the investigation into Respondent’s alleged misconduct. On October 12, 2011, he interviewed Winik. Winik told Shirvis that she “ascertained the overall background of the case” from Quealy, but because Quealy had limited information she called Respondent regarding what he saw. Respondent told Winik that he witnessed the shooting on his walk home from work. He then called 911 and gave a description of the perpetrators. In a follow-up call, Respondent confirmed to Winik that he saw muzzle flashes from the gun. Respondent also told Winik about being taken on a canvass and positively identifying the three arrested individuals at the scene of the car stop. Winik and Respondent never met in person. Though Winik told Shirvis that she spoke to Respondent twice, cell phone records showed only one call from the DA’s Office to Respondent.

DX 4 is an unsigned memorandum prepared by Winik regarding her involvement in the prosecution. In the memorandum, dated October 12, 2011, Winik wrote the following:

Quealy informed me that he was informed that Detective Irizarry from PSA 7 was walking home from being on duty when he observed an unapprehended male individual in vicinity of [REDACTED]

[REDACTED] County of Bronx, to have a pistol in his hand and observed said apprehended individual fire approximately seven shots into a large crowd of individuals. . . . I spoke with Detective Irizarry over the phone. . . . [He] informed me that when he was walking down the street after being on duty, he observed an unapprehended male individual start firing shots into a crowd. . . . He observed numerous muzzle flashes. . . . Detective further stated to me that he later identified the van and pointed out the driver of the van to be defendant [REDACTED]

In a November 2, 2011 interview, Winik told Shirvis that when she at one point told Respondent that she might not be able to proceed with prosecution, Respondent seemed not to have a problem with that outcome. She thought that was strange.

In an official Department interview, Respondent told Shirvis that he was at his residence at the time he made the 911 call. Shirvis never went to Respondent's house to see if the view from Respondent's window would be the area he claimed he made the observation because according to Shirvis, "his apartment faces [REDACTED]

[REDACTED] so there was no inconsistencies based on what he reported he saw and what was possible." The inconsistencies were rather with the positive identification that Respondent reportedly made. It was a possibility that Respondent observed the shooting while walking on the street, but then walked home and made the 911 call from his apartment. According to the officers who conducted the canvass, Respondent came from his apartment. Because [REDACTED] the corner at [REDACTED] would not have been visible from Respondent's residence.

Shirvis agreed that Respondent did not indicate in his 911 call that he saw the shooting. Shirvis described the call as Respondent referencing the shooting and then giving “additional information, descriptions, vehicles, direction of flight that he had – he was reporting seeing.” On-duty officers were already present on the scene at the time of Respondent’s call.

Respondent’s Case

Respondent called Police Officer Damary Irizarry as a witness and testified in his own behalf.

Police Officer Damary Irizarry

Damary was appointed to the Department on January 9, 2013 and is currently assigned to the 43 Precinct. She has been married to Respondent for 21 years. She was present with Respondent in their bedroom when he called 911. She heard Respondent state on the phone that there was a shooting, he heard shots fired, and he saw the person coming down the block in front of their home. When Damary looked out the window herself, she observed “one male running down the block and then another male joined him.” Their window is on the third floor of the building, and Damary stated that aside from the homes across the street, she could only see partially up the block. Respondent, who would have been unable to see the shooting from his location, did not tell the 911 operator that he saw a shooting. Respondent did not go downstairs or outside until he went to meet the responding officers. Damary picked Respondent up at the 44 Precinct station house at 10:30 or 11:00 p.m. that night.

Respondent

Respondent, an 11-year member of the Department, is currently assigned to Police Service Area (PSA) 7. He was promoted to detective in October 2005. He worked a day tour on the day of the incident. He arrived home at approximately 6:00 p.m. and began studying for the sergeant's test in his bedroom, which had a big window and small balcony. While he was studying, he heard "a few shots ring out." Respondent's 11-year-old son ran into the room, and Respondent instructed him to stay away from the windows. Respondent sat back on the bed, but heard a commotion outside. From his third-floor window, Respondent was able to see three or four men going in and out of a minivan. He could not tell what the men looked like, but he could see one man in a black jacket and one man in a red shirt exchange what he believed to be a gun. The man who received the gun got into the minivan. The minivan drove away. It was around that time that Respondent called 911. Meanwhile, the minivan circled back but drove away a second time when Department vehicles arrived at the scene. Respondent told the 911 operator exactly what he saw. He then walked downstairs and identified himself to the officers (Callahan and Colvin). A sergeant arrived at the scene. Respondent described the sergeant as a light-skinned Hispanic male who used to work in PSA 7 as an officer. Respondent told the sergeant exactly what he saw.

Callahan and Colvin brought Respondent to a car stop where the vehicle was different from the minivan he had observed from his window. At a second car stop, Respondent was able to positively identify the minivan. When he approached the van, however, he realized that, though one of the men may have had a black jacket and another may have been wearing a red jacket, the handcuffed individuals were not the

same men he had observed from his window. He told this to Callahan. Respondent got back into the Department vehicle, and assuming it was a "no-go," he asked the officers if they would drop him off. The officers told him that they needed to return briefly to the command. It was hard for him to hear what Callahan and Colvin were saying to each other because there was a divider between the front and rear seats.

At the station house, after waiting in the muster room, Respondent was directed to Quealy. Respondent expressed to Quealy that he did not know why he was there. He gave Quealy his contact information and told him, "I'm going to leave because those are not the guys; I saw the van but I didn't see these guys right here." He did not give Quealy a written statement, participate in a confirmatory show up at the cells with Quealy, or give Quealy a firsthand account of what happened. His interaction with Quealy was brief, lasting maybe 20 seconds. Respondent never spoke to the desk officer. Respondent did not recall seeing Grayson at the scene. A lieutenant was present, but he was not sure if it was Rojas.

When Winik called Respondent, she asked him if he recovered any ballistics or established a crime scene. Respondent informed Winik that he was never actually at the scene and was off duty when the incident occurred. According to Respondent, "[Winik] seemed very bothered and disturbed by what I said. The conversation was very short and she hung up the phone." Respondent never spoke to her again. When he later met with Drantch, he told him exactly what he saw; he stated that he was sitting in his bedroom and when he looked out the window he observed two males, one with a red coat and one with a black coat, appear to exchange a handgun. He also told Drantch that while he identified the minivan at the car stop, he never identified the individuals in the van.

Respondent did not recall Drantch taking any notes. According to Respondent, Drantch looked "perplexed" and after leaving the room returned and told Respondent, "Thank you, we don't need you anymore." Respondent was then dismissed; he was never asked about his 911 call or shown the SPRINT Report of the call.

### FINDINGS AND ANALYSIS

#### Specification No. 1

Respondent stands charged with making misleading statements during an interview conducted by prosecutors at the DA's Office, wherein he denied making a prior positive identification of the perpetrators. In his October 8, 2011 interview with Drantch, Respondent denied ever positively identifying the three individuals arrested at the car stop as the ones he had observed to be engaged in the incident where he heard shots fired. Respondent testified that he positively identified the minivan, but never positively identified the men who were removed from the van.

According to Callahan and Rojas, Respondent positively identified the suspects at the scene of the car stop. According to Grayson, he overheard Respondent's positive identification to Callahan. According to Quealy, Respondent, while in the station house, positively identified a prisoner in the red jacket as the man he had observed with a gun. According to Winik's memorandum, Respondent told her on the phone the day after the incident that he had identified the driver of the van as defendant [REDACTED]

If one were to take these statements as truth, the fact that there were four members of the service and one ADA, does not in and of itself give their statements more credibility because of the nature of the work they do. The Court looks to the weight of

the evidence and whether there is corroboration. Each statement standing alone is not very credible. It does not mean that the witness was lying under oath, but that the witness did not do all he or she could have done to get to the truth of the matter. For example, Grayson said he "overheard" Respondent make a positive identification and then he left the scene without speaking to Respondent. Respondent said he made a positive identification of the van, but not the occupants. Did Grayson leave at the point that Respondent identified the van? Winik says Respondent not only saw the shooting, but also saw muzzle flashes and identified the driver as the person who had the gun. Although Winik said she spoke to Respondent twice, a check of phone records indicate that she only had one conversation with Respondent and Respondent said she asked him about ballistics, not what he saw. Callahan who escorted Respondent to each show up did not testify that Respondent identified the driver as the shooter. In fact, Callahan said Respondent never specifically said which of the men was carrying the gun. The only person who said what Winik alleged in her memorandum (i.e., that Respondent was walking down the street when he saw someone fire seven shots into a crowd and he saw muzzle flashes from the shooter) was Quealy and he was not at the scene and was assigned the arrest in the station house. Quealy also testified that he prepared his arrest paperwork with Rojas, a supervisor who only spoke to Respondent briefly at the scene by asking two questions and never spoke to him at the station house.

The arrest report in this matter was prepared by Quealy, the officer who was assigned this arrest (DX 1). The arrest report notes that the defendants 1-4 did fire seven rounds into a group of people then fled the location in a vehicle. Defendant No. 4 was not apprehended because he fled the location on foot. Quealy testified before this Court

that he obtained the information contained in the arrest report from Respondent. He also testified that he was confused as to who did what, so he took Respondent to the cell area where the defendants were being detained and Respondent described who did what. If this account were to be believed, the Court questions why the arrest report listed all four defendants as the shooters when Quealy, as he alleged, was told by Respondent who did what.

Quealy testified that he does not think he made any Activity Log entries regarding what Respondent told him and which defendant did what. He could not recall if he took any notes. He also stated that he was unaware that Respondent made a 911 call. He said Respondent never told him this information in the conversation he had and he never listened to the 911 call. Quealy also acknowledged that he did not receive any Stop, Question and Frisk reports (UF 250s) from any of the supervisors who stopped the defendants. Yet, Quealy wants this Court to believe that he had a conversation with Respondent who did not mention he first called 911. He also wants this Court to believe that he has a full recollection of the facts regarding an arrest that he was not a witness to, but that was assigned to him. This is also despite the fact that Quealy told this Court that he was uncomfortable questioning Respondent because he [Quealy] only had three years on the job and Respondent was a detective. He explained:

**Witness [Quealy]:** A brief conversation. I was going off of, you know, a detective, kind of telling me. I felt comfortable that he knew what he was talking about.

**Commissioner:** And was the fact that he was a detective made you feel uncomfortable in terms of questioning him in a way?

**Quealy:** In a way, yes. At this time I only had like three years on. And I guess you hear like detective, you think, oh, how prestigious it is. I didn't want to insult

his character, I didn't want to insult—I didn't want to really—I didn't want to overstep. Tr. p. 87

Quealy testified that Police Officer Anabel Mercado vouchered the bullets and the fired rounds. Yet he testified that he did not have a conversation with Mercado and learned of the ballistics from the ADA. But there is no indication that that information was known to Respondent because he never stated in his 911 call that he saw seven shots fired into a crowd of people as Quealy said he received that information from Respondent. Respondent was a Detective at the time of the incident and calling 911 and leaving that information out would be serious.

Rojas testified that he is the Operations Coordinator of the 44 Precinct. On the incident date, he stopped a vehicle in the vicinity of the shooting, but Respondent gave a negative identification. He then went to the location of the Grayson stop where three suspects were already handcuffed. He said that he was informed that the "off-duty detective...positively identified those three individuals standing outside the van as the ones that were involved in the incident—the shooting incident." Rojas testified that on the street, he approached Respondent and asked, "Are you sure these are the guys?" He said, "Yes." I said, "Are you sure that's the vehicle?" He said, "Yes." Rojas testified that he did this despite getting information that Respondent made a positive ID already. This appears to be a self serving statement. Rojas made no notes regarding this incident and exactly what he said to Respondent. Rojas did not learn what role each of the three individuals played in the shooting. Rojas testified that he told Grayson to assign the arrests to Quealy and he resumed patrol.

Although Rojas testified that he had a brief conversation with Quealy at the station house as to how everything was going, Quealy testified that he prepared his arrest

paperwork with Rojas and faxed it to the DA's office. Rojas testified that he never spoke to Respondent at the station house. If Rojas never spoke to Respondent in detail on the street other than to ask him the two questions, and he never spoke to him in the station house, the Court questions how Rojas could be in a position to assist Quealy in preparation of the arrest paperwork regarding facts he was unaware of.

Another indication of a lack of investigation into this matter is that no one took a written statement from Respondent, an off duty member of the service who witnessed at least part of the incident. Respondent made himself available by calling 911, availing himself to canvass to look for the van and/or suspects and went down to the station house. Yet, no one took a written statement from him or memorialized what he said. Respondent at all times said he made his observations from his apartment window when he called 911. Quealy did not even know that Respondent called 911 and never listened to the phone call, and he was assigned the arrests of the suspects. Yet he testified that he spoke to Respondent. Shirvis, the investigator in this matter surmised that Respondent was walking home from work when he heard the gun shots, and then went to his apartment to call 911. Yet this was never Respondent's account of what transpired.

Callahan testified that he brought Respondent to two stops where he made negative identifications. He then took Respondent to a third stop where three men were lying on the ground. One was wearing a red jacket and another was wearing a black jacket and Respondent said that that was the van and the guys. Callahan said that Respondent never said who did what. Callahan took Respondent to the station house.

Callahan's testimony is key for two points. One, Callahan testified that he told Quealy (the officer assigned the arrests) exactly what happened from his point of view,

but the Court questions what that point of view is. Secondly, Callahan testified that he introduced Respondent to Quealy and he explicitly told Quealy to interview Respondent in order to get the story first hand. He told Quealy this was important because the DA's office wants assigned officers in "informed by cases" to get information firsthand instead of "being informed by two or three people down the road." Callahan resumed patrol, but he assumed Quealy spoke with Respondent. If Callahan knew the DA's office position on "informed by cases," there is concern as to why he felt the need to tell Quealy his view of the case from his personal point of view. In addition, Quealy stated that he did not know how he began to talk to Respondent. If Callahan introduced Respondent to Quealy and then said the "informed by cases" information regarding the DA's office, Quealy should have remembered this, especially since he was about to take on an "informed by" case. Callahan's statement about the DA's office concern in receiving cases that are based on second-hand and third-hand information leads this Court to believe that these cases were a real problem in the Bronx.

Grayson testified that he conducted the felony car stop of the minivan. Guns were drawn as the male Hispanics were removed from the vehicle and placed in handcuffs on the ground. The van was searched and Grayson testified that no firearm was recovered. This is at least the second or third stop of individuals in a van that occurred that date and up to this point, there were negative results. Grayson said Callahan arrived with the witness, a police officer he believed. The witness identified the two people as being part of the shooting and he left Callahan with whoever was the supervisor and the suspects, and resumed patrol. Grayson could not say who the supervisor was. He never spoke to Respondent. But Rojas testified that once the identification was made he too resumed

patrol. There is no indication as to who the other supervisor on the scene was. Although Callahan transported Respondent to the station house, there is no evidence in the record that a supervisor ever spoke to Respondent.

ADA Drantch from the Bronx testified. He spoke with Quealy. Quealy gave another version of the facts with more detail than what Quealy told the Court as he testified. Quealy told Drantch that Respondent told him that he observed the shooting, especially the muzzle flashes from the shooter. Respondent also told Quealy that the driver of the van was the person with the gun and Respondent also identified other van occupants. If this were the case, Respondent would have revealed seeing the shooting in the 911 call he made at the time of the incident and not say it was not an emergency call. Drantch said he spoke to Respondent who informed him that he was in his apartment at the time he made his observations.

The Court also has a problem with the unsigned memorandum of Winik. First of all it is unsigned. This leads the Court to believe that Winik is unsure of what aspects of the memorandum are accurate. She states in the memorandum that she is advised by Quealy who states that Respondent was walking when the events unfolded. It never states in her memorandum that Quealy was informed by Respondent of the events that are described. Winik told the investigator that she had at least two conversations with Respondent. Yet when an investigation was done of the phone records, only one conversation was found. Respondent testified that he only had one conversation with Winik and she was inquiring about ballistics. And when he informed her that he was off duty at the time of the incident and was unaware of any ballistics information, she became upset and hung up the phone.

When all of the evidence in this matter is evaluated, the Court has several in court statements by witnesses, which are not corroborated by anything else. No witness account is memorialized by an Activity Log entry. Some witnesses never had a conversation with Respondent about the details of what he saw and from where. Yet they are positive that he identified the defendants and the vehicle. The only piece of evidence that I have that is corroborated by a statement is the 911 call made by Respondent. He states in his call that his 911 call is in addition to the shots fired incident. He states it is not an emergency and he is off-duty. Had Respondent seen the shooter fire seven shots, along with the muzzle flashes and seen the shooter with the gun get into the driver seat of the van, his call to 911 would have been an emergency. Respondent testified in Court that he observed the incident from his apartment window. That was not the first time he made that statement, but others involved in the case did not seem to know or care about that statement. His statement to the Department investigator, Shirvis, Winik, and Drantch is consistent with the 911 call. No one else has a memorialized statement from Respondent.

How Quealy's account goes from what he stated Respondent told him to all four defendants shooting as contained in the arrest report is incredible. How it then goes to a report to the DA's office of muzzle flashes and Respondent seeing the shooter flee by driving the van is even more beyond belief.

Based on the quality of the evidence presented in this case, the Court cannot find by a preponderance of the credible evidence Respondent's guilt. It is no wonder the DA's office declined to prosecute this matter.

Accordingly, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

Respondent stands charged with making inconsistent statements to members of the Department and prosecutors at the DA's office regarding the shooting. According to Respondent, he never strayed from his account that he did not see the shooting occur, but only saw the aftermath of the shooting from his apartment window. This was the account he gave Drantch in the DA's Office on October 8, 2011. According to Quealy and Winik's memorandum, however, Respondent initially claimed that he was on his way home from work when he observed the shooter fire seven rounds and that he even saw the muzzle flashes from the gun.

Unlike the previous specification, no other members of the service corroborated Quealy's claim about what Respondent stated. Quealy did not make Activity Log entries about his conversation with Respondent, and, as noted above, the Court gives little weight to Winik's memorandum. In his 911 call, Respondent made it clear to the operator that it was not an emergency and that he was just calling to provide additional information to the on-duty officers who were already responding. This is consistent with Respondent's version of events.

Accordingly, Respondent is found Not Guilty of Specification No. 2.

It must be noted that Respondent was demoted from the rank of detective as a result of these charges.

Respectfully submitted,

**APPROVED**

MAR 11 2010  
*William J. Bratton*  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

*Claudia Daniels-DePeyster*  
Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials